

**Testimony before the
Committee on Resources, Subcommittee on Energy and Mineral Resources
U.S. House of Representatives**

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Hearing on Improving the Competitiveness of American's Mining Industry

April 28, 2005

Testimony of the Northwest Mining Association

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I. Introduction

The Northwest Mining Association (NWMA) is a 110 year old non-profit, non-partisan mining industry trade association based in Spokane, Washington. Today, NWMA has 1,000 members residing in 31 states and 6 Canadian provinces. Our purpose is to support and advance the mineral resource and related industries, to represent and inform members on technical, legislative and regulatory issues, to provide for the dissemination of educational materials related to mining, and to foster and promote economic opportunity and environmentally responsible mining.

Our members are actively involved in exploration and mining operations on BLM and USFS administered land in every western state. Our membership represents every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-based membership includes many small miners and exploration geologists as well as junior and large mining companies. More than 90% of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with the general mining laws, the National Environmental Policy Act (NEPA), the permitting process, the 43 CFR 3809 and 36 CFR 228A surface management regulations, and issues involving access to the public lands for mineral development.

The public lands provide a major source of domestic mineral production. Mining on federal lands provides the nations highest paid non-supervisory wage jobs. These jobs are one of the cornerstones of western rural economies and are the foundation for the creation of much non-mining service and support business found in or near federal lands in the West. Mining is the cornerstone of sustainable development in many western rural communities.

Mining on federal lands also provides substantial local and state tax revenues for infrastructure and services, as well as federal tax revenues. Mineral development also creates new wealth, which is distributed throughout the U.S. economy and society. Thousands of manufacturing and service jobs throughout the Midwest and Eastern parts of the U.S. are directly dependent on a strong U.S. mining industry. These economic and social benefits are dependent upon the U.S. mining industry's ability to attract investment capital in an intensely competitive global mining market.

A reliable domestic supply of minerals is essential to the nation's economic and national security, and to our quality of life. According to the U.S. Geological Survey, since 1993, the U.S. reliance on imported sources of minerals has increased seven-fold. In the early 1990's, 20% of world exploration dollars were spent in the United States. Today, only 8% of world exploration dollars are spent in the U.S. Why do mining companies find Canada, Mexico, South America, Australia and even Africa more desirable places to invest exploration dollars than the United States? This decrease is not because the U.S. lacks economically valuable mineral deposits.

The United States has been blessed with natural resources including the metals and minerals that are the foundation of our industrial economy. Only the combined countries of the former Soviet Union and Australia ranked higher than the U.S. in a recent study of the global distribution of 15 metals with important uses. Yet, U.S. mining activity continues to decrease as companies invest in other nations. There are serious consequences for this nation as more mineral activity moves abroad.

This increased dependency on imports is not in the national interest. Import dependency holds a multitude of negative connotations including aggravation of the U.S. balance of payments, unpredictable price fluctuations and vulnerability to possible supply disruptions from political or military activity. It is irresponsible to ignore the vast mineral resources we have within our nation's boundaries. Given the current state of the world, the potential for supply disruptions may be on the rise.

Therefore, it is imperative that the NEPA process be reviewed and reformed to remove inappropriate barriers to domestic mineral activity without sacrificing environmental protection. NWMA believes that reforming the NEPA process and streamlining the permitting system are critical to improving the competitiveness of the domestic mining industry.

Unfortunately, the sad truth is that the United States is considered a high risk, unpredictable country by the investment markets that supply the capital to fund exploration and development. The NEPA process, the U.S. permitting system, restricted access to mineral deposits and the inability to secure land tenure has made mineral development and production difficult, time consuming, costly and in some cases, impossible.

The mining industry is not alone in the view that delays in the permitting process are a significant problem. For example, the National Academy of Sciences (NAS) has concluded:

The permitting process is cumbersome, complex, and unpredictable because it requires cooperation among many stakeholders and compliance with dozens of regulations for a single mine. As a result, there is a tendency for the process to drag on for years, even a decade or more. This drains and diverts the resources of land management agencies that should be managing their full range of responsibilities. It is also burdensome to operators and does not provide the best environmental protection. The public, the land management agencies, and the permit applicants would all benefit if the permitting process were conducted more efficiently. *Hardrock Mining on Federal Lands* ("NAS Report") pp.122-123.

The costs, time delays and unpredictability of the NEPA process significantly impacts small and medium sized companies and the Canadian juniors that undertake the high risk grassroots exploration and early stage development. They are an important part of the mining industry's food chain and provide the feed stock that will be tomorrow's producing mines operated by larger companies.

The capital markets are saying no to mineral investment on federal public lands in the U.S., or charging a premium and/or exacting repayment terms that are not required for projects on state or private land. This lack of access to capital makes it difficult and expensive for small and medium sized companies (small businesses) to operate on public lands. The time delays involved in permitting a mine in the United States tie up capital too long, resulting in unacceptably low rate of returns. Given the commodity price cycle of minerals, investors simply cannot risk investing money in projects when prices are increasing, only to have the project delayed, prices fall, and the project become uneconomical.

Mining companies must have: (1) reasonable access to public lands; (2) security of land tenure; (3) reasonable permitting times; and (4) certainty in the permitting process, or the investments will not be made.

We are focusing our testimony today on three issues that must be addressed if the United States is going to be competitive in attracting mineral investment dollars, which are the foundation for the high paying direct and indirect jobs provided by the U.S. mining industry:

- (1) The need to reform the burdensome National Environmental Policy Act (NEPA) process, and stream the U.S. permitting system to provide certainty and eliminate unreasonable delays;
- (2) Access to mineral deposits on federal lands and security of land tenure for those deposits and ancillary facilities;
- (3) Restructure the claim maintenance or holding fee to encourage exploration.

Our testimony will conclude by demonstrating why the social and economic future of the United States depends on a strong, viable and competitive U.S. mining industry.

II. The National Environmental Policy Act (NEPA) and the U.S. Permitting System

NWMA wants to emphasize that U.S. environmental regulations are not the problem. Rather, **it is the process.** Our members take great pride in protecting the environment while producing the minerals America needs. The U.S. mining industry is the most environmentally responsible mining industry in the world. Mining and environmental protection are compatible, and mineral products make possible both the development of our society and the mitigation of modern society's impact on the environment.

Our members believe mining should be conducted in a manner that integrates the protection of human health and of the natural environment with the benefits of economic and social growth. Our members' commitment to environmentally and socially responsible mining was demonstrated when NWMA became the first mining trade association to adopt a *Statement of*

Environmental Principles in October, 1998 (attached). These principles are not just ‘words on a piece of paper,’ they represent the actual practice of the U.S. mining industry. One of the principles is “that from project inception through closure, potential environmental impacts should be comprehensively identified, and appropriately evaluated, managed and mitigated.” This was NEPA’s original goal and we continue to support that goal today.

However, during the Clinton Administration, attempting to permit a mine in the United States became an overt political exercise fraught with uncertainties and delay after delay after delay. Even under the current administration, it is the never-ending story with no sideboards and no accountability. Very few federal regulators are willing to make decisions for fear of being second guessed. The fear of litigation results in paralysis/analysis to the detriment of the industry, the economy and the environment.

The current NEPA process makes it very difficult for federal regulators to dismiss comments that lack foundation, resulting in unnecessary expenditures of substantial public resources, numerous delays, protracted and contentious public debates over proposed mines, and enormous costs to the industry. Anti-mining obstructionist groups are able to delay projects through appeals and litigation with little or no investment, no risk, and no accountability. Not only do these delays directly impact the mining companies trying to invest capital in wealth and job creating mineral development, they adversely impact western rural communities, national security and the economic future of the U.S.

NEPA is no longer about the environment. It is no longer the planning tool it was designed to be. It has become **THE TOOL** used by obstructionist groups who oppose responsible and lawful mineral development on federal public lands; a project-killing, job-killing, community-killing tool. Communities like Safford, Arizona, Sanders and Lincoln Counties in Montana, San Juan County in Utah pay the price of a broken permitting system. Let me give you a few examples:

1. Near Safford in southeastern Arizona, Phelps Dodge has been trying to develop an open-pit copper mine in an historic mining district since 1987. Phelps Dodge initiated the NEPA process for surface operations in 1994 as a BLM land exchange and the initial Plan of Operations was filed in May 1996. The original schedule for development was 1999. However, the Draft Environmental Impact Statement (DEIS) was not published until September 1998, with anticipated project development beginning in 2002.

Just two weeks ago, after 11 years of delays and appeals, the Department of Interior affirmed the state BLM Director’s decision to approve the land exchange, which will finally allow the project to go forward. Unfortunately, it is likely anti-mining obstructionists will challenge the land exchange in court.

Why is Phelps Dodge having so much trouble permitting an open pit copper mine in a location where it conducted underground mining operations from the 1960’s until the 1980’s? Safford is a mining community and depends upon mining for family wage

level jobs, economic development and taxes to support the local infrastructure. Without mining, there is no sustainable development in Safford.

Phelps Dodge is hopeful to be in production in 2007 or early 2008. That's 20 years since initial exploration and 13 years since the land exchange process began. The \$400 million to \$450 million project will bring 745 direct and indirect jobs, have an estimated economic impact of \$42 million to \$52 million and generate \$4.6 million in local tax revenue for the Safford AZ community.

Why was Phelps Dodge pursuing a land exchange in the first place? The answer is simple; it has become almost impossible to permit a new mine on federal land.

Now, compare this process nightmare with the permitting experience of Phelps Dodge's in Chile, where it permitted a mine to the exact same environmental standards required in the United States in 13 months. If you are a mining industry CEO, where do you invest your shareholders' money?

2. In western Montana, Revett Minerals' Rock Creek Project has endured 17 years of permitting analysis. Rock Creek is a non-acid generating world class copper/silver deposit discovered in 1963 and explored from 1964 to 1983. A Plan of Operations was submitted to the Montana Department of Environmental Quality (DEQ) and the U.S. Forest Service in 1987. NEPA review began in 1989. The first Draft EIS was released in 1995 with a Supplemental Draft EIS released in 1998. The Supplemental DEIS addressed issues based on public, agency and company comments. The proposal was reviewed by 5 federal agencies, 2 state DEQ's, and 4 tribal entities. The final EIS was released in September 2001 and a favorable Record of Decision issued in December 2001, 14 years after the Plan of Operations was submitted.

An important part of the ROD issued in December 2001 is the Biological Opinion (BO) from the U.S. Fish and Wildlife Service (USFWS) concerning the project's impact on threatened and endangered species, specifically Grizzly Bear and Bull Trout. The BO was challenged in court by obstructionist groups and was withdrawn in March 2002. The USFWS called for further studies of the mine's effects on Grizzly Bear and Bull Trout. As a result, the initial ROD approval also was withdrawn. A revised BO was issued in May 2003 as a non-jeopardy Biological Opinion. A new ROD was issued in June 2003 approving the Rock Creek Project. Several administrative appeals were filed during the open comment period and subsequently denied. Obstructionist groups also sued USFWS in federal court challenging the non-jeopardy Biological Opinion.

Subsequent to receiving the favorable Record of Decision in June 2003, the project owner, Revett Minerals, Inc., completed its initial public offering and obtained a listing on the Toronto Stock Exchange raising net proceeds of approximately US\$25.5 million to fund the development of Rock Creek.

On March 30, 2005, an activist liberal federal judge in Montana remanded the Non-jeopardy Biological Opinion back to the U.S. Fish and Wildlife Service to reanalyze its

non-jeopardy findings. In effect, this federal judge has substituted his opinion for 16 years of analysis by U.S. Fish and Wildlife Service professionals. **The judge's ruling has prompted the Canadian investment bankers who underwrote Revett's IPO to question their decision to invest in the United States.**

Rock Creek will produce more than 230 million ounces of silver and more than 2 million pounds of copper, and provide 330 family wage level jobs over a 30 year mine life in the poorest county with the highest unemployment in Montana. Capital costs for construction will exceed \$200 million. At current prices (\$7.00/oz silver and \$1.50/lb copper), the value of the reserves at Rock Creek is in excess of \$ 2,059 million. Over the life of the mine, Rock Creek will generate \$237 million in payroll, purchase \$303 million in materials and supplies, and pay more than \$30 million in property and production taxes, \$23 million in state income taxes and \$85 million in federal income taxes. Revett also will post bonds in excess of \$44 million to ensure closure and reclamation in an environmentally responsible manner.

3. The Montanore project is another world class, non-acid generating underground copper/silver project located near the Rock Creek project in western Montana. It was discovered by U.S. Borax in the early 1980's. Noranda Minerals acquired title to the project in the late 1980's and began in depth engineering and environmental studies in 1988. The USFS and the state of Montana did a thorough evaluation of the project, considered several alternatives and issued a favorable Environmental Impact Statement and Record of Decision in 1993. Pursuant to the favorable Record of Decision, all permits necessary for mining were issued. The Record of Decision was immediately appealed by environmental obstructionist groups. In 1998, Noranda finally received a favorable ruling from the 9th circuit court of appeals, more than 10 years after the permitting began.

The obstructionist groups that sued Noranda told company officials they knew they would not win the lawsuit and could not legally stop the mine. They openly admitted that their strategy was to prolong the permitting process, litigate the Record of Decision and increase the company's expense in the hope that it would eventually give up. A good strategy if you are opposed to mining in the U.S. and one that is, unfortunately, working. Shortly thereafter, after investing more than \$100 million in Montanore, Noranda closed all U.S. offices, announced they were pulling out of the U.S. and sought someone to buy the Montanore project.

Noranda was unable to find a buyer for this world class mineral deposit because it involved federal public land. Finally, in 2002 Noranda elected to abandon its interest in the project and quitclaimed the patented mining claims covering the deposit to a subsidiary of Mines Management, Inc., the current owner. In January 2005, Mines Management submitted a 13 volume application for re-permitting and development of the Montanore project. How long it will take is anybody's guess.

Montanore is estimated to contain more than 260 million ounces of silver and 2 billion pounds of copper. Montanore expected to bring significant employment and resources

to the community of Libby, Lincoln County, and the state of Montana. If in production today, the mine would employ 250-300 people with an average annual payroll of more than \$10 million in addition to the ancillary benefits of added capital purchases and supplies exceeding \$200 million, and would have a positive impact on a local community with more than 15% unemployment.

4. In San Juan County Utah, Constellation Copper Corporation is finally under construction at its Lisbon Valley project, but it hasn't been easy. In 1991, the company began gathering baseline environmental data and the plan of operations for an open pit copper mine was deemed to be complete by the BLM in August, 1995. In March, 1997, a favorable Environmental Impact Statement and Record of Decision were issued by the BLM, and the company obtained \$62.5 million in construction financing.

The Record of Decision was stayed in July, 1997 by the Interior Board of Land Appeals (IBLA) in response to a lawsuit brought by two obstructionist group, including the Mineral Policy Center (now Earthworks). As a result of the stay, the company lost its construction financing. The basis for the stay was illegal bonding regulations promulgated by former DOI Secretary Babbitt in violation of the small business Regulatory Flexibility Act and the Administrative Procedure Act. NWMA sued Secretary Babbitt over the illegal regulations and they were declared invalid by a DC federal district court judge in May, 1998.

Subsequently, the IBLA removed the stay and ruled against the obstructionist groups on their appeal. In March 1999, the company had all federal and state permits necessary to build and operate the Lisbon Valley Mine. Unfortunately for the company and San Juan County Utah, the copper price fell to recent low levels and the company was unable to obtain new financing. The project remained in care and maintenance until 2004 when the copper price finally reached a level that would allow Constellation to obtain financing to begin construction.

Constellation attempted to finance construction through U.S. and Canadian banks, but hit a stone wall. These banks would not loan money to junior mining companies operating on federal public land in the U.S., even though Constellation had all necessary permits in hand and the statute of limitations on appeals had run. Constellation ultimately obtained more expensive financing in London with a South African bank, but at an amount less than necessary to complete construction. Constellation was forced to arrange additional equity financing to cover the shortfall.

The South African bank has been unable to syndicate the loan due to federal land permitting issues and the ability of obstructionist groups to stop mining projects on federal land. In order to remove expensive loan conditions, Constellation attempted to enter into a land exchange with the BLM. If the lands where the mine will be located were privatized, the interest rate would go down and Constellation would not be subject to harsh payback terms.

It now appears that the land exchange will not solve Constellation's financing dilemma because former DOI Secretary Babbitt changed a BLM rule on split estates. Under the new rule, the BLM continues to manage the surface of unpatented mining claims even though the mining claimant acquires title to the surface (Prior to November, 2000, the BLM did not manage the surface of split estate mining claims where a private party owned the surface). The only exception is for Stock Raising Homestead lands.

Thus, the NEPA process will continue to impede mine development and expansion at Lisbon Valley as more ore is discovered. Constellation will not proceed with the land exchange because they will not get what they need – freedom from the NEPA process; and the BLM will not obtain title to a highly desirable tract of recreation land.

Constellation was able to talk the South African bank out of requiring the land exchange prior to loan drawdown. Thus, construction began in December, 2004, more than 13 years after the company began acquiring baseline environmental data. The Lisbon Valley mine in an area that is **“Zoned for Industrial Development”** and as one BLM official quipped at the commencement of the Appeal process **“... if you can't mine in Lisbon Valley you can't mine on BLM land anywhere ...”** This statement came very close to being true.

First production is scheduled for October 2005. The remaining issue is a re-assessment of cultural inventories on the property. What could possibly have changed to justify re-assessment? Is it any wonder why investors are leery about or not interested in financing mining projects on federal lands?

In terms of economic impact, Lisbon Valley is a \$55 million construction project. The mine will provide 145 jobs with annual payroll in excess of \$9 million. Annual expenditures for goods and services are estimated at \$18 million. At today's copper prices, the mine will generate \$2.5 million per year in local and state taxes and royalties and pay \$18 million per year in income taxes. Lisbon Valley will be the largest private employer in Southeastern Utah.

III. Recommendations for Improving the Competitiveness of America's Mining Industry

Improving the competitiveness of America's mining industry begins with reforming the NEPA process and streamlining the US permitting System. NWMA commends Chairman Pombo for forming a bi-partisan Task Force on Improving the National Environmental Policy Act. NWMA and its members look forward to working with Representative McMorris and the NEPA Task Force to help the Task Force understand what is, and more importantly, what is not working with NEPA. One of our members provided testimony at the April 23 Spokane WA Field hearing. We believe many of the findings of the NEPA Task Force will confirm the testimony presented today and the solutions suggested, if implemented, will be a major step toward improving the competitiveness of America's mining industry.

In addition to the obvious benefits to mining companies, an expedited and predictable permitting process creates substantial economic benefits for local and state governments and

area merchants. With a faster permitting schedule, the jobs needed for project construction and operation become a reality sooner and on a fairly reliable schedule. These jobs create a revenue stream and increase the overall economic activity in the region near the mine. The workers pay taxes and buy goods and services in nearby communities. Additionally, a predictable permitting schedule facilitates planning between community leaders, elected officials, and the project proponent to address fiscal and socioeconomic impacts associated with a new or expanded workforce.

1. Reaffirm the procedural intent of NEPA

NEPA was designed to be a planning tool to make sure we understood the environmental impacts of major federal actions, assessed compliance with state and federal environmental laws and regulations and mitigated the environmental impacts to ensure compliance with substantive environmental law. It never was intended to be a law that created new substantive environmental requirements or rights that could stop a project that otherwise complied with all substantive state and federal environmental laws and regulations.

Congress should reaffirm the procedural intent of NEPA by providing that the purpose of NEPA is procedural only and that NEPA cannot be used to condition, delay or deny a project that complies with all substantive environmental laws and regulations. In other words, if a mining proposal met the requirements of the Clean Water Act, the Clean Air Act, the Endangered Species Act, etc., NEPA could not be used to add conditions or requirements, or require mitigation not specifically mandated by a substantive environmental law or regulation.

This recommendation is based on legislation Montana recently adopted to reaffirm the procedural intent of its state environmental policy act (MEPA) (MEPA is based on NEPA). Montana state agencies and courts were using MEPA to require project proponents to go beyond the requirements of substantive state law. In other words, agencies and courts were imposing requirements that the legislature itself had not chosen to impose, resulting in unnecessary delays, additional costs, and in some cases, project abandonment.

The Montana legislation is working. The director of Montana's Department of Environmental Quality cited this legislation in explaining why it was not imposing project-killing requirements and mitigation sought by obstructionist groups when it issued an affirmative record of decision on the Rock Creek project in 2001.

2. Implement the reform recommendations of the National Mining Association's white paper entitled *The National Environmental Policy Act Impact on Public Lands Mineral Development and Options for Reform*.

This report was prepared by NWMA member David Delcour for the National Mining Association and is based on interviews with 20 mining industry employees who have extensive experience with NEPA, 6 public land managers who had recent experience

with mining projects subject to NEPA and 4 representatives of two other public land user groups, timber and oil and gas. Although this report was prepared in 1997, its findings and recommendations are equally valid today. If anything, the problems cited in this report have increased, permitting times are longer and frustration with the NEPA process is at an all time high.

This report is attached to this testimony and incorporated by reference.

3. Implement the findings and recommendations of the National Academy of Science contained in its 1999 report to Congress entitled *Hardrock Mining on Federal Lands*.

In 1998, Congress authorized and mandated the National Academy of Sciences to identify and consider, among other things, recommendations and conclusions regarding how federal and state environmental, reclamation and permitting requirements and programs can be coordinated to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation.

Several of those recommendations focused specifically on improving the NEPA process and streamlining the U.S. permitting system. Those recommendations are attached to this testimony and incorporated by reference.

4. Bring accountability to the permitting process.

Under the current NEPA process obstructionists can delay the mine permitting process for years through frivolous appeals and litigation with no risk and little investment. Meanwhile the project proponent and the community that depends on the jobs and economic contributions the mine will provide pay dearly.

One way to bring fairness and accountability to the process is to impose standing requirements in order to appeal or litigate an agency decision approving a mining project. Another is to require project opponents to post a bond to compensate the project proponent for the costs incurred as a result of a frivolous appeal or lawsuit challenging an agency Record of Decision.

A third requirement Congress should impose is to require project opponents to pay the legal fees and costs of both the agency and the project proponent when they lose a legal challenge to an agency decision that has been through the NEPA process.

5. Require Land Management Agencies to demonstrate that their regulations, policies and decisions comply with the Mining and Minerals Policy Act of 1970, 30 USC § 21(a) and the Domestic Minerals Program Extension Act of 1953, 50 USC § 2181.

The Mining and Minerals Policy Act of 1970 (MMPA) states that it is the continuing policy of the federal government to which requires the federal government “to foster and encourage private enterprise in the (1) development of economically sound and

stable domestic mining . . . industries.” The MMPA has been on the books for 30 years, but the congressional policy set forth therein has been either ignored or treated with down right hostility. The Secretary of Interior and the Secretary of Agriculture should issue direction to all DOI agencies and the USFS requiring an analysis of how agency actions comply with the MMPA. It is important that federal policies do not conflict with the MMPA or create barriers to the environmentally responsible development of domestic mineral resources.

The Domestic Minerals Program Extension Act of 1953 This Act is very relevant to our country’s current vulnerability to access strategic and critical minerals, and the potential adverse impact of that vulnerability on national and homeland security. The Act states, in part:

It is hereby recognized that the continued dependence on overseas sources of supply for strategic or critical minerals and metals during periods of threatening world conflict or of political instability within those nations controlling the sources of supply of such materials gravely endangers the present and future economy and security of the United States. It is therefore declared to be the policy of the Congress that each department and agency of the Federal Government charged with responsibilities concerning the discovery, development, production, and acquisition of strategic or critical minerals and metals shall undertake to decrease further and to eliminate where possible the dependency of the United States on overseas sources of supply of each such material.

In order to ensure compliance with this law, the President should issue an Executive Order requiring federal agencies to demonstrate that their regulations, policies and decisions comply with this law. In addition, a directive from the Office of the Secretary to the departmental agencies, similar to the one suggested above, would appear to be consistent with helping the President achieve his homeland security goals.

6. Provide Security of land tenure of mineral deposits and ancillary facilities through patenting, direct sale and land exchanges.

As the four mine-permitting examples discussed above indicate, security of land tenure is necessary if the U.S. mining industry is going to attract investment capital and provide local communities with all of the short and long term benefits of mining, including post-mining economic development of the land. Privatization of mining claims (e.g., obtaining title to public land either through the traditional mineral patenting process, via a land exchange, or through a direct sale) benefits the public because it facilitates future redevelopment of mined properties into commercial projects that can continue to provide jobs and tax revenues for mining communities. Privatization thus enables sustainable development.

Privatization creates strong incentives for landowners to plan for productive post-mining land uses and to manage mining properties as long-term assets in ways that facilitate future economic uses of the lands. Private ownership means landowners – not taxpayers, are responsible for cleaning up environmental problems if any should develop in the future at former mine sites.

Current policies preventing or impeding privatization (e.g., the patent moratorium and complex land exchange and direct sale procedures) do not serve the public's interests because they create a number of legal and regulatory barriers that thwart sustainable, productive uses of the land following mining. In particular, the federal reclamation regulations that mandate removal of transmission lines and project infrastructure during reclamation create unnecessary barriers to sustainable development. New policies are needed to facilitate leaving these facilities in place so they can be re-used for a variety of post-mining purposes and to encourage management of mine sites as properties with long-term value that extends well beyond the life of the mine.

Under the current patent moratorium scenario, mining companies thus have what amounts to a temporary license to use the land for mining and mineral processing activities. Private-sector, post-mining projects that could provide jobs for people previously employed by the mine, and generate a continuous stream of tax revenues cannot be authorized under the Mining Law. Thus, sustainable use of the mined area is difficult if not impossible. Absent any prospect for post-mining commercial development, a boom and bust cycle appears to be a predictable, if not inevitable, outcome of mining on federal land. Unless the affected communities are successful in attracting other industries while the mine is still operating, sustainable development is difficult to achieve.

Although the opportunities to diversify rural economies are greater in today's world of interstate highways and e-commerce than they were in the past, the severe restrictions currently placed on post-mining uses of federal land (i.e., unpatented claims) makes sustaining a strong economy following mining unnecessarily difficult. Privatization is one way to avoid a serious economic decline following mining because the infrastructure developed on patented claims could remain in place after mining, and could be used to support redevelopment of the land. Post-mining commercial use of previously mined lands could be a long-term source of jobs and tax revenues, and thus could represent a win-win for all parties involved: the land owner/developer, the public, and the government. This commercial, beneficial use of the land following mining would result in sustainable development and help mining communities thrive after mines are closed and reclaimed.

Risk capital and project financing is considerably more difficult to obtain for projects on public land than for projects where the mining company owns the land. Securing financing for projects on public land is like seeking a mortgage for a house on land that you do not (and cannot) own. Thus, the patent moratorium chills investment in mining, which translates into fewer jobs, reduced economic activity, and less revenue for local communities, states, and the federal government.

Privatization does not mean less environmental regulation. Mines built on private and state land are required to meet the same environmental standards and comply with the same environmental laws and regulations as mines on federal public land. The difference is that mines permitted on private or state land are not subject to the federal NEPA process, and let me be clear about this, the NEPA process does not add any meaningful environmental improvements.

Patenting is not the only way to privatize federal land. The Chairman's direct sale bill is a step in the right direction that we fully support. We also support a more efficient and streamlined land exchange process where the federal land management agency no longer manages the surface of split estate land with unpatented mining claims.

7. Restructure the claim holding fee to encourage exploration and development of mineral deposits.

The U.S. claim holding fee of \$100 per claim is the third highest in the world on a per acre basis. Only Sierra Leone and Norway have a higher claim fee. The U.S. claim holding fee is substantially higher than the fees charged by other North and South American countries. The current claim holding fee law requires the fee to be adjusted for inflation every five years. This has an adverse impact on hundreds, perhaps thousands of small businesses. Last year BLM raised the fee to \$125 per claim effective July 1, 2004. Congress intervened and ordered the fee rolled back to \$100 per claim until the BLM produces a report analyzing the delays in the permitting process and implements a permit tracking system.

The claim holding fee is a substantial cost for the grassroots explorationist and junior mining companies that conduct most of the early stage exploration in the U.S. Virtually all of these companies are small business. These companies generally do not own production and therefore do not have cash flow to cover the fee. They must pay the fee from money they raise for exploration in either the equity or debt markets. This is expensive money and what is paid in holding fees is not invested in the ground looking for economically valuable mineral deposits.

Exploration is the mining industry's R & D. Without exploration, there will be no new mines. The claim holding fee is, in effect, a tax on the mining industry's R & D. I don't know another industry that is subject to a tax on its research and development expenses.

Economically valuable mineral deposits are rare and hard to find. Large claim holdings of several hundred to more than a thousand are required to provide the claim protection one needs to justify the risk and costs of exploring for new mineral deposits. Several hundred claims at \$100 or more per claim is a substantial expense for a company that lacks cash flow and must rely on investment or debt capital. High claim fees take money out of the ground, reduce the chance of success and increase the costs of finding the mineral deposits that will become tomorrow's mines.

The claim holding fee should be substantially lowered for the first three to five years for small entities, or at least companies without production revenue, to encourage grassroots exploration. Thereafter, the fee should escalate fairly rapidly to discourage one from holding claims for purely speculative purposes. This will encourage exploration companies to put the capital they raise into the ground or release the claims so someone else can work the ground. Once production is established and producing cash flow, the fee would be raised to the current level.

8. The exploration sector needs security of land tenure prior to making a discovery.

Companies conducting mineral exploration on the public lands need to be able to exercise their rights under the Mining Law to use and occupy public land for the purpose of making a discovery of a valuable mineral deposit. The Clinton administration issued Solicitor's Opinions based on incorrect interpretations of the Mining Law that sought to diminish the right to occupy public land prior to making a discovery. This uncertainty places mineral investments at risk. Without security of land tenure prior to making a discovery, investors will seek opportunities in countries that provide a more secure investment environment.

IV. Does Mining Really Matter?

Many in our society cling to the somewhat naïve notion that mining is not necessary. The truth is that all past successful societies have encouraged mining, as will all future successful societies.

Modern civilization began from humble agrarian origins. Over time, a few clever people were soon able to discover the basic principles of first copper, then bronze metallurgy. It was not long before these processes were used to develop tools that began transforming society. But unlike today, the people of years past never lost sight of the fact that they were all dependent on what came from the earth for their continued survival, as well as their newly found wealth. These fundamental concepts are as valid today as they were in ancient times, even though our civilization has grown so complex that it is easy to lose sight of them.

The basic fact is that we mine minerals because our society demands that we do so, and that is why a profit can be made from time to time. Mining makes everything else happen. Mining provides the strategic metals and minerals that are essential for agriculture, construction and manufacturing. Minerals are essential in order to satisfy the basic requirements of an individual's well-being -- food, clothing and shelter. Mining makes civilization, our high living standards and today's sophisticated technologies possible. Without mining there is no civilization, pure and simple -- no art, no science, no temples. Unfortunately, our society and our government are filled with people who do not understand these basic fundamentals.

Society's demand for mineral products is increasing at an increasing rate. Meeting that demand is an international business -- one in which the United States must remain competitive with other nations for scarce investment capital. As a society we have three choices:

- We can choose not to meet the increasing demand for mineral products. The result will be a lower standard of living for ourselves and future generations as scarcity of mineral supplies force prices to skyrocket and inflation to once again run rampant. The net result will be a lower standard of living and an increase in poverty.
- We could meet the demand for increasing mineral products by mining those minerals outside of the United States. This choice has adverse economic and ecological consequences for our country. **Poverty is the worst polluter**, for without economic health there can be no ecological health. As a society, can we truly afford to become dependent on other countries to supply our basic mineral raw materials? Can we afford to do without the wealth creating investment dollars, jobs, and taxes? A decline in U.S. mineral production will increase reliance on foreign sources of minerals for our national defense, increase our national trade deficit, and eliminate thousands of high paying skilled jobs in America. If we allow this to happen, how long can our nation remain the world's great economic engine?
- American society's third choice is to produce the minerals we need to maintain our high standard of living in the United States in an environmentally responsible manner. The consequences of this decision are jobs, economic growth, a clean, healthy environment and enhanced national security.

We believe the choice is obvious, but before long-term investments of hundreds of millions of dollars are going to be directed toward the U.S. mining industry, investors must see a an efficient and predictable permitting system, a predictable legal system, and a government that operates by the rule of law. Investors must know that our government will uphold property rights as their investments prove successful. They will not risk instant losses to "surprise" decisions by activist judges and unelected bureaucrats. We stand ready, willing and able to work with you to ensure that mining has a long, sound future in the United States.

Thank you for the opportunity to address you today concerning these matters of most importance.

Respectfully submitted this 28th day of April 2005.

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